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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,327	05/07/2007	Werner Hartmann	KU-06PCT	3630

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NEW YORK, NY 10017

EXAMINER
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WALDBAUM, SAMUEL A

ART UNIT	PAPER NUMBER
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1792

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03/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,327	<b>Applicant(s)</b> HARTMANN ET AL.	
	<b>Examiner</b> SAMUEL A. WALDBAUM	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-5, 8-12 and 15-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer (U.S. 4,665,723, hereafter `723).**

3. Claim 1: `723 teaches a devices for applying a fluid above a running web (fig. 3, part 5 is the web, part 1 is the fluid device, col. 1, lines 45-55). Claims directed to apparatus must be distinguished from prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a devices is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), where the liquid applicator of apparatus `723 is capable of operating in different modes, by the use of pumps, valves and controllers they are able to affect the operating parameters (col. 3, lines 1-67).

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4. Claim 2: '723 teaches that the web moves horizontally underneath the fluid applicator (fig. 3, part 5, col. 2, lines 60-69), hence it is inherent that some means is used to guide the web below the applicator as the web is moving.

5. Claim 3: '723 teaches that the applicator is movable vertically with respect to the web (col. 3, lines 34-55).

6. Claims 4 and 5: '723 teaches that the applicator extends the width of the web (col. 2, line 60-col. 3, line 15).

7. Claim 8: '723 teaches a liquid chamber (fig. 3, part 2, the chamber below the piston part 16, which is fed from the feed conduits, parts 22 and 23, col. 3, lines 34-55).

8. Claim 9: '723 teaches that the chamber has bores (fig 3, part 8, which shows that the bores has a smaller cross section the chamber).

9. Claim 10: '723 teaches that the bores are in communication with the applicator slit (fig. 3, part 10)

10. Claim 11: '723 teaches a baffle (fig. 3, part 9, is the chamber between the slits and the bores, whose walls act as a baffle surface directing the fluid to the slit, col. 2, line 60-col. 3, line 15) surface between the bores (part 8) and the slit (part 10).

11. Claim 12: '723 teaches that the baffle surface is at an angle (fig. 3, shows the wall surface of the baffles are angled). It would have been obvious to one having ordinary skill in the art at the time the invention was made to set the angle of the baffle at 45 degrees to yield the optimal flow of flow guided from the chamber to the slit, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA).

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12. Claims 15 and 16: `723 teaches that the application has a movable longitudinally sliding blocking plate blocking off flow from the applicator (col. 4, lines 5-15). Claims directed to apparatus must be distinguished from prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a device is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning that the apparatus `723 is capable of only partially sliding the blocking plate into the fluid applicator thus blocking the fluid for a partial portion of the applicator.

13. Claim 17: `723 teaches application plate on both sides of the slit (fig. 3, part 3 which is the bottom portion of the applicator that contains the baffles and the slit).

**Claims 6, 7, 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer (U.S. 4,665,723) as applied to claim 2 above, and further in view of Zimmer (U.S. 5,225,539, hereafter `539).**

`723 teaches all the limitation of claim 2 above.

14. Claims 6 and 19: `723 does not teach that the web guide means is underneath the fluid applicator. `539 is a apparatus for processing a moving web. `539 teaches a flexible web guide member located beneath the web (fig. 1, part 4, col. 4, lines 26-40) to equalize any pressure applied to the web (col. 4, lines 26-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the flex web guide as taught by `539 under the fluid applicator (thus under the web) in apparatus `723 to equalize the pressure on the web placed by the fluid applicator pushing downwards.

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15. Claim 7: It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the web guide adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

16. Claims 20: The examiner takes official notices that that pneumatic actuator for moving objects. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a pneumatic actuator for supporting the flexible web guide of apparatus `723 in view of `539 to have allowed a movable force to be applied to the web guide through a support member.

**Claims 13 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer (U.S. 4,665,723) as applied to claim 11 above, and further in view of Fleissner (U.S. 5,913,905, hereafter `905).**

`723 teaches all the limitation of claim 11 above.

17. Claims 13 and 14: `723 does not teach that the baffle surface is divided in to a plurality of channels by means of parallel webs. `905 is a fluid applicator for a running web. `905 teaches the baffles are divided in channels (fig. 2, part 13) by mutually parallel dividers/webs (fig. 2, the walls separating the channels) where each channel corresponds to a bore (fig. 2, part 23 is the bore, col. 3, lines 15-41) thus allowing the fluid to be distributed to the different applicator locations (fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have divided the baffles into different flow channels lined up with the bores as taught by `905 in apparatus `723 to have distributed to the different applicator locations.

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**Claim 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer (U.S. 4,665,723) as applied to claim 17 above, and further in view of Garvey (U.S. 2,918,714, hereafter `714).**

`723 teaches all the limitation of claim 18 above.

18. Claim 18: `723 does not teach that the applicator plate is hinged. `714 is solving the same problem as the applicant's of hinging the parts of the nozzle assembly to allow access to the interior components. `714 teaches that portions of the nozzle are hinged (fig 1 and 3, which has a hinged axis parallel to the longitudinal direction of flow the fluid), thus providing access to the interior components of the nozzle (col. 1, lines 25-45). It would have been obvious to one of ordinary skill in the art at time the invention was made to have hinged as taught by `714 the applicator plate on the longitudinal axis of apparatus `723 to have provided access to the interior parts of the fluid applicator for cleaning.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./  
Examiner, Art Unit 1792

/FRANKIE L. STINSON/  
Primary Examiner, Art Unit 1792